IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 63 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

KANCHANJUNGA INVESTMENT P LTD

Appearance:

MR AKIL KURESHI FOR MR MANISH R BHATT for Petitioner

MR RK PATEL for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 28/08/2000

ORAL JUDGEMENT (Per D.M. DHARMADHIKARI, C.J.)

1. Two cross references each by the assessee and the Department have been referred and registered as Income-Tax Reference No. 63 of 1985. The question framed at the instance of the Department is as under:

"Whether on the facts and in the circumstances of the case the Tribunal has been right in law in holding that the interest amount of Rs. 4,13,081 due from Screen Pvt. Ltd. could not be brought to tax?"

2. In the cross reference, the questions referred at the instance of the assessee are as under:

"1.Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the applicable or effective rate of interest was 13.25% and that there was no variation in the agreement which resulted in continuation of effective rate of interest at 11.25%."

2.Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the positive evidence was necessary regarding waiver of interest above the rate of 11.25% and in ignoring the entries made in the books of accounts?"

3. Learned counsel appearing for the assessee and the department point out that the Tribunal in the instant case had relied on its earlier decision in the assessee's own case for the assessment year 1975-76 decided on 7-8-1991, out of which Income-Tax Reference No. 195 of 1984 on similar questions was referred. A Division Bench of this Court comprising Justice B.C. Patel and Justice P.B. Majmudar, by order dated 20-9-1999 in the earlier reference, i.e., Income-Tax Reference No. 195 of 1984, after hearing the parties, came to the conclusion that the questions cannot be answered without further evidence to be led before the Assessing Officer. This Court, therefore, in the case (supra) remanded the matter to the Tribunal, for passing appropriate order keeping in view the observations made in that case. Learned counsel for the parties submit that in this case as well a similar order of remand can be passed.

4. Relying, therefore, on the decision of this Court in Income-Tax Reference No. 195 of 1984 decided on 20-9-1999 in the case of CIT vs. Kanchanjunga Investment Private Limited, we send back the case to the Tribunal to pass appropriate order keeping in consideration the

observations made in the order of this Court in Income Tax Reference No. 195 of 1984 decided on 20-9-1999.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

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